

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

I. INTRODUCTION

This matter comes before the Court on plaintiff's Motion for Sanctions By Way of Default Judgment against individual defendants Terry and Darcy Daw. (Dkt. #28). Plaintiff asserts that defendants obviously and intentionally violated this Court's prior Order granting his motion to compel and the federal rules of civil procedure governing discovery, and therefore, a sanction in the form of default judgment is now appropriate. Defendants have failed to respond to this motion. Accordingly, for the reasons set forth below, the Court GRANTS plaintiff's motion.

II. DISCUSSION

A. Background

23 This action arises from an employment dispute between plaintiff and defendants. Plaintiff
24 initially named Aloha Sports, Inc. (“ASI”), and its majority shareholder and sole remaining
25 corporate officer, Terry Daw, along with his wife, as defendants to this action. At all times
26 relevant to this action, plaintiff was employed by ASI as president and managing director. ASI
operated the Seattle Bowl, also known as the Oahu Bowl, an NCAA-sanctioned college football

1 game played in Seattle, WA.

2 Plaintiff entered into an employment agreement with ASI, whereby ASI agreed to pay
3 plaintiff an annual salary of \$120,000, plus benefits. Plaintiff's employment with ASI was "at-
4 will," and he could be terminated with or without cause. However, if plaintiff was terminated
5 for reasons other than for cause, the agreement provided that he would be provided a severance
6 payment equal to six months salary, plus one additional month for every year of service prior to
7 his termination.

8 Plaintiff asserts that at all times relevant to this action he has rendered his services in good
9 faith and with diligence. He never resigned or otherwise ceased working for ASI, and
10 defendants agree that ASI has never formally terminated plaintiff's employment.

11 Plaintiff now alleges that ASI has failed to pay him regular wages for work performed
12 from February through July 2002 and from March through May 2003, in a total amount of
13 \$85,000, plus benefits from March through May 2003 for \$1,000, and accrued but
14 uncompensated vacation in the amount of \$5,000.

15 It appears that ASI has ceased doing business. It lost its lease for its principal premises in
16 Bellevue, WA, and has lost NCAA certification for the Seattle Bowl. Accordingly, plaintiff
17 asserts that he has been constructively discharged from his employment. As a result, plaintiff
18 also alleges that he is entitled to severance pay of \$70,000, because he was not terminated for
19 cause.

20 Plaintiff brought the instant lawsuit on June 3, 2005. Both corporate defendant and
21 individually-named defendants were represented by counsel. However, on January 13, 2006,
22 this Court allowed defense counsel to withdraw. (Dkt. #9). At the same time, the Court
23 informed corporate defendant that failure to obtain substitute counsel within ten business days
24 of that Order could result in a default judgment against the corporation, or a dismissal of its
25 counterclaims. Corporate defendant failed to obtain substitute counsel, and this Court
26 subsequently granted default judgment against it in the amount of \$397,136.59. The Court then

1 allowed entry and immediate registration of that judgment. (Dkt. #15).

2 In the meantime, plaintiff had been pursuing discovery with individually-named
3 defendants. On May 18, 2006, plaintiff filed a motion to compel, asserting that defendants had
4 failed to adequately respond to its requests for production. (Dkt. #24). This Court granted the
5 motion, directing defendants to provide complete responses to plaintiff's discovery requests. In
6 response, defendants apparently produced more than 55,000 pages of documents, well-beyond
7 the scope of the requests for production. Plaintiff asserts that he explained to defendants that it
8 would take dozens of hours to attempt to identify the actual responsive documents, and asked
9 them to identify, with specificity, the documents responsive to the discovery requests.
10 Defendants did not comply with plaintiff's request. The instant motion followed.

11 **B. Sanctions**

12 Plaintiff argues that defendants have intentionally violated Rule 34 of the Federal Rules of
13 Civil Procedure and the prior Order of this Court compelling them to provide complete
14 discovery responses. (Dkt. #28 at 4-5). As a result, he asserts that he is entitled to sanctions in
15 the form of default judgment against defendants. As noted above, defendants have failed to
16 respond to the instant motion.

17 Rule 34 of the Federal Rules of Civil Procedure requires the party producing documents
18 to produce them "as they are kept in the usual course of business or shall organize and label
19 them to correspond with the categories in the request." Fed. R. Civ. P. 34(b). This rule was
20 adopted to prevent parties from deliberately mixing critical documents in an attempt to obscure
21 their importance. Rule 34, Advisory Committee Note (1980 Amendment, Subdivision (b)).

22 Rule 34 clearly prohibits a party from producing a mass of responsive documents in bulk
23 in an attempt to obscure the important responsive documents. *See Board of Education v.*
24 *Admiral Heating & Ventilating, Inc.*, 104 F.R.D. 23, 36 (N.D. Ill. 1984). As demonstrated by
25 the evidence presented by plaintiff, it appears that defendants are indeed attempting to do just
26 that. Defendants fail to assert otherwise.

1 This Court’s Local Rules state that “[i]f a party fails to file papers in opposition to a
2 motion, such failure may be considered by the court as an admission that the motion has merit.”
3 Local Rule CR 7(b)(2). Having reviewed the record in this case, the Court finds no reason not
4 to apply this rule. Plaintiff has provided a sum certain amount in damages, which is adequately
5 supported by the record. Accordingly, the Court will enter default judgment against defendants
6 in the amount of \$419,205.56.

III. CONCLUSION

8 (1) Plaintiff's Motion for Sanctions By Way of Default Judgment (Dkt. #28) is
9 GRANTED.

10 (2) The Clerk SHALL enter default judgment in the amount of \$419,205.56 against
11 defendants Terry and Darcy Daw.

12 || (3) This case is now CLOSED.

13 (4) The Clerk shall direct a copy of this Order to defendants and all counsel of record.

14 DATED this 20th day of July, 2006.


RICARDO S. MARTINEZ
UNITED STATES DISTRICT JUDGE